

ORIGINAL ARTICLE

Sexual and reproductive rights in adolescence

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SUMMARY

Objective: To present legal milestones to ensure the Brazilian adolescent autonomy in dealing with their sexual and reproductive health. **Methods:** Literature review of national legislation published on the official sites of governmental organs (Ministry of Health and Ministry of Education) and Class Associations (Federal Council of Medicine [Conselho Federal de Medicina – CFM] and the Federal Council of Nursing – COFEN). **Results:** We found 8 legislations, of which 3 were from Class Associations (COFEN and CFM), one Interministerial Ordinance (Ministries of Health and Education), one Technical Note of the National STD/AIDS Program, and 3 Federal Laws. Many of the legal guarantees directly affect the adolescent population (guarantee of schooling during pregnancy and puerperal period or maternity leave, condom distribution, no discrimination in the school environment on the basis of serology). They are important tools for the preservation of sexual and reproductive rights, privacy of medical care, search for reliable health information, and access to inputs such as condoms and contraceptive methods. **Conclusion:** The analysis of the legislation listed in the present study demonstrated that these legal milestones are essential to ensure the safe and healthy experience of sexuality, and all health and education professionals involved in adolescent counseling should know them comprehensively.

Keywords: Adolescent; sexuality; legislation as topic; children and adolescents' rights; integrated health care; adolescent behavior.

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INTRODUCTION

According to the IBGE (Brazilian Institute of Geography and Statistics), in 2010 the adolescent population aged 10 to 19 years reached 17.9% of the country's total population, representing approximately 34 million young people in this age group¹.

Adolescence is the transitional phase between childhood and adulthood, and is a distinct phase; it has unique characteristics in the biological, psychological, and social aspects. This phase has several developmental pathways in the subject, of which are noteworthy to highlight the occurrence of puberty and the separation of parental figures. The latter is the critical path of social development and search for one's identity. The term "adolescence" comes from the Latin word *adolescere* and means to grow. The word adolescence was first used in English in 1430, and referred to the age group of 14 to 21 years for men and from 12 to 21 years for women².

Adolescence described within a specified range of ages has generated controversies of legal nature in different areas. Thus, there are different legal views on the adolescents' ability in relation to their responsibility and autonomy regarding the acts of voting³, marrying, hiring or signing contracts⁴, labor relations^{5,6} and legal liability under the law⁷, which have generated different interpretations when it comes to exercising their sexuality⁸. However, as the legal definition on the practice of safe sex is not clearly expressed, the healthcare and education professionals believe they should condition assistance to sexual and reproductive health of adolescents to legal parental consent, as there are uncertainties regarding the risks of litigation or accusations of disrespect⁹.

The concepts of sexual and reproductive rights are relatively new in the world. The International Conference on Population and Development held in Cairo (1994) for the first time discussed sexuality in a positive sense to the detriment of discussions (albeit not less important) on genital mutilation, sexual violence, and sexually transmitted diseases (STDs). This document represents a crucial milestone in gender equality and in a wide dimension of human rights in which sexual and reproductive health are present¹⁰. Moreover, it includes within Chapter VII (sexual and reproductive rights) guidance directed at adolescents, with particular emphasis on female. This item expresses early motherhood, the responsibility of both sexes about sexuality and reproduction, the risks of early neutering, and also guides the signatory countries to ensure the full development of the adolescents and to involve them in disseminating information and identifying their needs¹⁰.

Sexuality in adolescence is strongly influenced by the biopsychosocial transformations, i.e., there are many discoveries and conflicts at this stage of life that can result in risk and vulnerability in the adolescent's life¹¹. Risks are

the possibilities of harm or complications, such as cases of HIV/AIDS and other STD infections, early start of sexual activity, unplanned pregnancy without any medical or family advice, unsafe abortions, maternal morbidity, and cases of sexual violence¹¹⁻¹⁴. Additionally, there are difficulties concerning healthcare and education services in dealing with the issue and ensuring universal sexual and reproductive rights of this population.

The vulnerabilities¹⁵ can be understood as a set of factors (individual or collective) that affect adolescents, exposing their fragility and/or causing difficulties of access to means of prevention and protection. The situations of vulnerability should be seen through the individual, social, and institutional components regarding three perceptions of the same situation: who is vulnerable, what is that individual vulnerable to and under what circumstances¹⁶.

Thus, it is important to highlight the concept of sexuality as a way of understanding the rights contained therein. Sexuality is part of the human identity and develops over a lifetime; it is understood as an intrinsic factor of the human being that motivates him to different forms of seeking and experiencing pleasure. It is a social and historical construct, so it gets different outlines in different spatial and time dynamics^{17,18}. As a key element of the human condition, the exercise of sexuality must be ensured within the dimension of human rights, consisting of a range of sexual and reproductive rights that can ensure it.

Therefore, this study aims to provide Brazilian legal milestones that guarantee autonomy to adolescents in dealing with their sexual and reproductive health, and the right to receive guidance and accurate information from health services and schools.

METHODS

In our country, despite the importance of this issue, we found no published articles in the healthcare field related to the subject under the Brazilian law. Therefore, we performed this descriptive, analytical study with no comparison factors using the following steps for data collection, selection, and analysis:

1. The research was based on literature review of national legislation published in the official sites of the official governmental organs (Ministry of Health and Ministry of Education) and Class Associations (Conselho Federal de Medicina – Federal Council of Medicine – CFM – and Conselho Federal de Enfermagem – Federal Council of Nursing – COFEN).

2. The choice of legislations sought to meet the following criteria: a) be under federal law; b) law generalization when dealing with all adolescents; c) contain (even indirectly) an approach to sexual and reproductive rights; d) be related to the areas of education and health. We excluded all the laws that were not interrelated to the four mentioned criteria.

3. When collecting data, two important references were considered as guiding the analysis: the document “Legal Milestone – Health: an adolescent right”⁸ and “Theoretical and Referential Milestone – sexual and reproductive health of young individuals”¹⁹, both from the Ministry of Health.

RESULTS

The search resulted in eight legislations, of which three were from Class Associations (CFM^{20,21} and COFEN²²), one from Interministerial Ordinance (Ministry of Health and Ministry of Education²³), one from Technical Note of the National STD/AIDS program,²⁴ and three from Federal Laws^{5,25,26}.

We listed the following legal documents: Federal Law 8069/90⁵ — Statute of the Child and Adolescent (articles 1 to 14); Federal Law 9263/96²⁵ — “Provisions on family planning”; Federal Law 6202/75²⁶ — “Guarantees home exercises to pregnant students”; Medical Ethics Code — Law CFM 1.931²⁰ (articles 74 and 78); Nursing Ethics Code — Law COFEN 311/2007²² (articles 15 to 21 and articles 81 to 85); Law CFM 1811/2006²¹ — “Sets ethical standards on emergency contraception to be used by physicians”; Interministerial Ordinance 796²³ of 05/29/1992 of the Ministry of Health and Education — “Establishes educational standards and procedures related to the transmission and prevention of HIV infection”; Technical Note #13/2009²⁴ of the National STD/AIDS Program, Ministry of Health.

DISCUSSION

The reality of adolescence in Brazil is strongly marked by deficiencies in the implementation of public policies that promote the full development of the individual. Regarding sexual and reproductive rights, the triad health-education-family is crucial to constitute legal guarantees for the safe and healthy development of adolescence.

Thus, the first instance of analysis should be to a specific legislation (the Statute of the Child and Adolescent — ECA⁵), in which the subject is the adolescent. Then the study will address each legal milestone as a reference of work.

ECA⁵ AND SEXUAL AND REPRODUCTIVE RIGHTS

The first article of the Law states the full protection of the child and adolescent. There is no subject completeness without considering sexuality components. As a fundamental human right, the ECA⁵ must ensure all opportunities for the development of the subject, establishing as priority the rights to life, health, food, education, culture, and leisure. The protection also concerns adolescent exposure to embarrassment and degrading forms of exploitation, neglect and omission, as well as any form of violence.

There is a lack of articles in ECA⁵ dealing with the sexuality or sexual and reproductive rights of adolescents

beyond motherhood and protection against abuse and sexual exploitation⁹. When dealing with the right to life, the law has given priority to ensuring healthcare and guarantees pre- and perinatal care to pregnant adolescents through the Unified Health System (SUS), as well as other basic conditions for mother and child. However, sexuality as a component of the personality must have its full development guaranteed as a fundamental condition of the human being.

PRIVACY, CONFIDENTIALITY, AND RELIABILITY IN HEALTHCARE SERVICE: CODES OF ETHICS OF HEALTH PROFESSIONALS

The adequate approach of the adolescent should comprehend the principles of privacy, reliability, and confidentiality as an ethical manner to prevent any vexatious situation.

Therefore, adolescents have the right to be treated in privacy, regardless of their age, if that is their wish (except in cases of intellectual disabilities and some forms of psychiatric disorders). However, the right to privacy does not mean eliminating the family's responsibilities; on the contrary, they should be constantly encouraged to participate in their children's lives. The necessary difference between privacy and family presence resides in the professional attitude of those treating them (doctors, nurses, or auxiliaries). They should know how to differentiate between information that should be kept confidential and cases where the need for communication is prominent, such as cases in which their lives or the lives of others are at risk, or when the professional realizes that the adolescent is incapable of self-care; however, in these cases, the adolescent must be informed of this decision.

In a very straightforward manner, the Code of Medical Ethics²⁰ in its Article 74 states that it is forbidden to “Disclose professional information concerning minor patients, including to their parents or legal guardians, provided the child has the capacity to assess the problem and find ways to solve it, unless the non-disclosure may cause harm to the patient.” But the Code of Medical Ethics²⁰ also considers doctors responsible if this secrecy is violated by their assistants as stated in Article 78, “Failure to guide his or her staff and students to observe professional secrecy and to ensure that it is maintained.”

Likewise, the Code of Nursing Ethics²² establishes professional secrecy that includes the staff; however it is incisive in highlighting Article 82, §4: “Professional secrecy regarding the minor should be maintained even when disclosure is requested by parents or guardians [...]”.

Therefore, the legal milestones of adolescent healthcare ensure that they should receive treatment, counseling, and accurate information about the experience of their sexuality in all health services, established within a relationship of trust between professional and patient.

FAMILY PLANNING

Although the Law 9.263/96²⁵, which regulates §7 of Article 226 of the Federal Constitution⁶, deals with family planning, it does not mention the age group to which it refers. Article 1 states that “[...] family planning is a right of every citizen [...]”, and only restricts the participation of those younger than twenty-five years in sterilization procedures. In this sense, the right to basic principles of family planning expressed in Article 3, lines I to V understand that assistance to conception; health care during prenatal, birth, and postpartum periods; newborn care; control of sexually transmitted diseases; and prevention and control of cervical cancer, breast cancer and penile cancer should also be extended to adolescents.

LEGAL GUARANTEE TO PREGNANT STUDENTS

The Federal Law 6.202/75²⁶ guarantees the pregnant student the possibility to continue her studies at home after the eighth month of gestation and during the period of maternity leave, which can be extended through medical certificate. This legal guarantee is essential for thousands of adolescents who become pregnant before the age of twenty while still at school. It is known that early pregnancy has a strong impact on the lives of adolescents, who tend to drop out from school due to the pregnancy.

Ensuring completion of the school year can be an important factor to encourage these young women to return to school for basic education completion.

EMERGENCY CONTRACEPTION AT ANY STAGE OF THE REPRODUCTIVE LIFE

CFM resolution 1811/2006²¹ establishes ethical standards for use of emergency contraception. In its consideration on the use by adolescents, the resolution in its Article 4 states that emergency contraception can be used at any stage of the reproductive life and phase of the menstrual cycle as a means of preventing pregnancy. The resolution also emphasizes that contraception is not about termination of pregnancy, so it does not hurt the legal provisions of the country's Penal Code. Emergency contraception is a form of family planning, in which the adolescents can prevent teenage pregnancy, giving them the opportunity to redesign their reproductive lifespan.

GUARANTEE OF FREE ACCESS TO MALE CONDOMS

Technical Note N. 13/2009²⁴ – STD/AIDS National Program recommends that the State and Municipal Health Secretariats facilitate the access of the most vulnerable populations to male condoms. Thus, simple distribution is the first step to ensure unrestricted access. The Ministry of Health recommends that there is no need for medical prescription, request for identification documents, or mandatory participation of users in lectures and other meetings.

This direction is critical for adolescents, as it has been shown that most of the time many are sexually active, but the family does not know about it; thus, having to identify oneself when acquiring condoms makes young people vulnerable and hinders prevention.

PROTECTION TO HIV-INFECTED INDIVIDUALS – EDUCATIONAL STANDARDS AND PROCEDURES

The Interministerial Ordinance, N. 796²³ of 05/29/1992, of the Ministries of Education and Health establishes educational procedures on HIV transmission and prevention. The Interministerial Ordinance has arisen from discriminatory behaviors in school environments based on demands for breach of confidentiality and misinformation about modes of HIV transmission.

Among the standards and procedures are: prohibition of requiring a serological test for student enrollment or hiring any employee, assurance of confidentiality to any member of the school community on their serology results, and prohibition of special distinction of classes or specific schools by serological criteria.

The ordinance also recommends that schools develop educational programs so that individuals can be adequately informed on ways of HIV transmission and prevention and, therefore, encourage non-discrimination against HIV carriers.

According to the Ministry of Health¹³, over 7 thousand young people are infected with HIV every day. This represents almost half of all reported cases. About 10 million adolescents live with HIV. Thus, most adolescents are still in the educational process and its completion should be guaranteed under any circumstances.

FINAL CONSIDERATIONS

Every adolescent needs the contribution of adults, which is crucial at this stage of life. Helping them to overcome the different social, cognitive and physical conflicts represents listening to them, considering, negotiating, and providing conditions so that their first choices and decisions can be responsible and healthy to be experienced with autonomy. Sexuality as a component of identity also develops at this stage of life. Along with the “pubertal surge”, affective relationships will consolidate and the findings (particularly the sexual ones) are present.

The adolescent therefore, as a developing human being, needs the full protection offered by the triad state-society-family, as stated in the Statute of the Child and Adolescent⁵. Thus, the individual may safely go through the stage of total dependence, represented by childhood, to the stage of relative independence (adolescence), and to full independence, the expression of adult life.

The sexual and reproductive rights of adolescents are frequently not guaranteed. Most of the legal milestones

analyzed do not mention directly the term “adolescent”, but they should be considered constituents of the terms “citizens”, “universal rights”, “man and woman”. Many of the legal guarantees directly affect the adolescent population (guarantee of education for adolescents during maternity, condom distribution, non-discrimination by serology in the school environment) and are important tools for the preservation of sexual and reproductive rights.

Other rights more specifically ensure the privacy and reliability in health care interactions. A relationship of trust between professionals and adolescents is essential, so the latter can take advantage of relevant information for them and ensure continuity of care and the search for additional accurate information.

CONCLUSION

The analysis of the legislation listed herein demonstrated that these legal milestones are essential in ensuring the safe and healthy experience of sexuality, and all health and education professionals involved in adolescent counseling should know them comprehensively, and therefore require the full dissemination of these legal mechanisms. However, the analyzed milestones do not clearly elucidate youth participation as an important action in preventive public policies with emphasis on sexual education, addressing the search for pleasure, particularly women's pleasure that is marked by many beliefs and taboos.

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